

REMARKS

Claims 1-55 are pending in this application and were examined in the Final Office Action mailed July 13, 2007. Claims 20-55 were allowed, and claims 4, 5, 8 and 10-18 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 30 and 54 have been amended in this response. Reconsideration of the present application as amended and including claims 1-55 is respectfully requested.

The declaration is objected to for including the article "the" in the phrase "material to the patentability." While it is respectfully submitted that this is at most a minor deficiency, if a deficiency at all, a newly executed supplemental declaration is being obtained from the inventors and will be submitted when received.

Claim 30 has been amended to increase the indentation of line 5 thereof to maintain consistency in form with the remaining portion of the claim. Claim 54 has been amended to correct a typographical error.

Claims 1-3, 6, 7, 9 and 19 were rejected as being anticipated by U.S. Patent No. 3,486,505 to Morrison. As an initial matter, the Final Office Action states that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action." It is noted for the record that the rejected claims were not amended in the previous response, and that the new claims added in the previous response have been allowed. Accordingly, it is respectfully submitted that this statement in the Final Office Action is not correct since there has been no rejection of any amended claims.

The Final Office Action asserts that Morrison discloses the "guide members include a planar surface and define an elongated slot 13 opening therebetween." Whether or not channel 13 is a slot between arms 11, channel 13 does not disclose the slots that are recited in claim 1. Specifically, claim 1 recites "each of said pair of guide members including a body with an outer surface and an opposite guide surface and an elongated slot opening therebetween, said slot extending along said respective guide member" (emphasis added.) Since claim 1 recites that each of said pair of guide members includes an elongated slot, claim 1 requires that each guide member include a slot. Claim 1 also requires each slot to open between the outer surface and the opposite guide surface of the respective guide member. Therefore, claim 1 requires each guide member to include a slot that opens between the guide surface and the outer surface of the

respective guide member. There is no structure in Morrison that can be properly considered to correspond to these features of the guide members of claim 1.

In contrast, Morrison discloses that "arms 11 define a channel 13 into which the bone graft C may be placed, with the tips 12 in contact with one another, as shown in FIG. 1." See col. 2, lines 18-20. However, there is no disclosure that each arm 11 includes a channel 13 that extends between an outer surface and a guide surface of each of the arms 11.

In response to the arguments in Applicant's previous response, the Final Office Action asserts that channel 13 extends through the arms 11 taken together (i.e. the space therebetween), and that the channel extends between both the outer surface and guide surface of both arms 11. However, Morrison does not disclose that each arm 11 includes a slot opening between a guide surface and an outer surface of each arm 11. At most, Morrison can only be fairly characterized as disclosing a single channel between arms 11.

Claim 1 also recites "a spreader positioned between said pair of guide members, said spreader including a central body and a pair of opposite wings extending therefrom, each wing being slidably received in said slot of a corresponding one of said pair of guide members". These limitations in claim 1 further make it clear that each guide member has a slot, a feature which Morrison lacks as discussed above. Furthermore, the Final Office Action asserts that block 14 is the spreader and that its wide lateral portions are wings extending integrally therefrom as shown in Fig. 5, and that the wings extend into the channel 13. Whether or not the lateral portions of block 14 can be considered to be wings, the lateral portions are not received in slots of both of the guide members as recited in claim 1. Even if channel 13 were considered to be a slot were it opens along the sides of arms 11, block 14 is not sliding received in the side openings of channel 13. Rather, Figure 5 of Morrison clearly shows that block 14 is confined within the space defined between arms 11. Thus, for this additional reason, Morrison fails to disclose all the elements of claim 1 arranged as recited in claim 1. Therefore, Morrison cannot anticipate claim 1 for this additional reason.

Claims 2-3, 6, 7, 9 and 19 depend directly or indirectly from claim 1 and are allowable at least for the reasons claim 1 is allowable. Withdrawal of the rejection of these claims is respectfully requested.

The present application is believed to be in condition for allowance. Reconsideration and allowance of the present application including claims 1-55 is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

By: Douglas A. Collier
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2079
Phone: (317) 238-6333

KD_IM-1110902_1